

## REMARKS

Reconsideration of the above-referenced application is respectfully requested in view of the above amendments and these remarks. Claims 1-15 are currently pending.

In the Office Action, the oath was objected to because it was limited to 37 C.F.R. § 1.56(a) instead of referring to all of Section 1.56. Applicants have signed a new oath, which is enclosed with this Amendment, that references all of Section 1.56. As the new oath states that the Applicants acknowledge their duty to disclose to the United States Patent and Trademark Office all information known to them under 37 C.F.R. § 1.56, Applicants respectfully request that this objection be withdrawn.

The Office Action notes that the drawings fail to comply with 37 C.F.R. § 1.84(p)(5). Applicants submit a new FIG. 1 which deletes the element labeled #30 and replaces reference numeral 22 found in 21a with reference numeral 23 to refer to the CBSC. The Figures now correspond to the Specification, and therefore Applicants respectfully request that this objection be withdrawn.

The Examiner mentions in an objection to the claims as they recite “a first version,” “a second version” and “an upgraded second version.” Applicants believe that in the context of the present application the use of the terms first version, second version and upgraded second version is clear. Nonetheless, Applicants appreciate the helpful suggestions made by the Examiner to clarify the language in the claims and that these changes do not alter the scope of the invention. Applicants have made the changes to claims 1-3 as recommended by the Examiner and have made similar changes throughout the remaining claims to make them consistent. As Applicants have made the changes requested by the Examiner, it is respectfully requested that this objection be withdrawn.

In the Office Action, claims 1-5 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, it is noted that “the secondary processor” and the “the second state data format” did not have proper antecedent basis. In accordance with the Examiner’s helpful suggestions in the objection to the claims stated above, Applicants have amended claim 1 to overcome the rejection. Applicants note that similar language was used in claims 6, 14 and 15 and have made

corresponding changes in those claims too. In light of Applicants amendments, it is respectfully submitted that the claims distinctly claim the subject matter of the invention. It is therefore respectfully requested that the rejection under Section 112, second paragraph, be withdrawn.

The Office Action rejects claims 1, 4-6, and 9-15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent No. 6,101,327 to Holte-Rost et al. It is stated that Holte-Rost disclose the elements of independent claims 1, 6, 11, 14 and 15 except that they do not specifically disclose the “first format” and the “second format” but that it would be obvious to one of ordinary skill in the art to understand that the disclosed resource object was storing a state in a “first format” and after the transfer of the resource object the state was held in a “second format.” In addition, it is stated that it would be obvious in view of Holte-Rost to convert the saved state data in a first format of the state data to a second format of the state data, wherein the second format of the state data is compatible with the upgraded second version of a control application.

With respect to claims 1, 4-5 and 11-14, Applicants have amended the claims to overcome the rejection. In particular, Applicants now claim that the upgraded second version of software runs after the primary processor has quiesced. In this way, only one version of software is running at time. On the other hand, Holte-Rost teach that the old release and the new release of software are active and running at the same time. “With the method according to the present invention a new version of software will co-exist with the old version of software during upgrading. In this way, it is possible to test new software with test traffic, while the normal traffic runs on the old version of software.” Column 6, lines 8-12. In view of the foregoing, it is respectfully submitted that Holte-Rost does not disclose, teach or otherwise suggest the invention claimed in independent claims 1, 11 and 14. As claims 4-5 and 12-13 depend upon and include each and every limitation of claims 1 and 11, it is respectfully submitted that Holte-Rost also do not render the dependent claims obvious. It is therefore respectfully requested, with respect to claims 1, 4-5, and 11-14 that the rejection under Section 103(a) be withdrawn.

With respect to claims 6 and 15, Applicants respectfully traverse the interpretation of the present claims and the scope of Holte-Rost. Claims 6 and 15 are directed to a downgrading a software version of a wireless communication system or a

broader system. In the present invention, the primary controller controls the operation of the system and the second controller is used for backup in the event that something prevents the first controller from operating. One of the elements of concern in transfer from the first controller to the second controller is the transfer of state data, which indicates the steady state, from the first controller to the second controller. This concern is augmented in the context of software downgrades when the software versions on the first controller and the second controller are not the same and where software is not downwardly compatible, i.e. the state data from a new version of software cannot run on an old version of software. In order to overcome this concern, claims 6 and 15 each include a converting step that converts the state data saved in a first format corresponding to the state data for running the first version of software to state data in a second format corresponding the state data needed for running the second version of software. As state in the Specification for a system downgrade, the conversion of the state data is to an older version of the state data. See Page 10, lines 14-18.

Holte-Rost do not disclose the conversion of the state data. Instead, Holte-Rost discloses only that resources are saved for use by the new version and the old version. In fact, Holte-Rost teaches away from a conversion when it discusses the cancellation, or abortion, of a software conversion. Holte-Rost states, "A reversion, by applying the signal CommitTakeover to the old static processes, is possible but the states in the new static processes that have been changed during the time between the Takeover signal and the CommitTakeover signal will be lost." Holte-Rost, column 8, lines 58-63. In other words, the state data transferred by Holte-Rost in a downgrade is the state data from the new version of software that cannot be used by the downgraded second version. If the state data could be used by the downgraded second version then signals would not be lost. This does not create network stability as is required by claims 6 and 15.

Moreover, Applicants disagree that downgrading software from a one version to an earlier version is equivalent to upgrading. The concerns are different and the order in which the steps are to be performed are different. In particular, the primary concern is that software is not always backward compatible so that not all the data, such as state data, used and created with the new software does not necessarily run on the earlier version of software. The present invention overcomes this issue by converting the state

data. Holte-Rost does not overcome this problem because it does not convert saved state data.

In view of the foregoing, Applicants respectfully submit that Holte-Rost do not disclose, teach or otherwise suggest the conversion of state data during the downgrade of software in a system. In therefore respectfully requested that the rejection under Section 103(a) be withdrawn. As claims 9-10 depend upon independent claim 6 and include each and every limitation of that claim, including the converting step, it is respectfully submitted that these claims are not obvious in view of Holte-Rost. It is therefore respectfully requested that the rejection under Section 103(a) be withdrawn.

In the Office Action, claims 2, 3, 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Holte-Rost in view of United States Patent No. 5, 666, 293 to Metz et al. Assuming that Metz does disclose the use of a control table including software version, Metz does not disclose the quiescing of primary processor before running the updated second version of software as required by claims 2 and 3. In addition, Metz does not disclose the converting of state data as required by claims 7 and 8. For the reasons given above with respect to independent claims 1 and 6 upon which claims 2, 3, 7 and 8 depend, Applicants respectfully submit that these rejected claims are patentable over Holte-Rost in view of Metz. Applicant therefore respectfully request that this rejection under Section 103(a) be withdrawn.

As the Applicants have overcome all substantive rejections and objections given by the Examiner and have complied with all requests properly presented by the Examiner, the Applicants contend that this Amendment, with the above discussion, overcomes the Examiner's objections to and rejections of the pending claims. Therefore, the Applicants respectfully solicit allowance of the application. If the Examiner is of the opinion that any issues regarding the status of the claims remain after this response, the Examiner is invited to contact the undersigned representative to expedite resolution of the matter.

Serial No. 09/993,991  
Moore et al  
Case No. CE08644R

Please charge any fees associated herewith, including extension of time fees, to  
**50-2117.**

Respectfully submitted,  
Moore, Brian J., et al.

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